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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,453	11/07/2003	Howard Murad	060915-0031	9723

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EXAMINER	
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ART UNIT	PAPER NUMBER
1618	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/702,453	MURAD, HOWARD	
	Examiner	Art Unit	
	JAKE M. VU	1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 March 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *28-50* is/are pending in the application.

4a) Of the above claim(s) *41-50* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *28-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *11/7/03,9/15/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of Applicant's Restriction Requirement Response filed on 03/04/2008; Information Disclosure Statements filed on 11/07/2003 and 09/15/2006; and Preliminary Amendment filed on 11/07/2003.

- Claims 1-27 have been cancelled.
- Claims 28-50 have been added.
- Claims 28-50 are pending in the instant application.
- Claims 41-50 are withdrawn from consideration.

Election/Restrictions

Applicant's election of Group I (claims 28-40) and specie election of "ceramide", "hyaluronic acid", "alpha-hydroxy acid", and "aspirin" in the reply filed on 03/04/2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 28-40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over of U.S. Patent No. 6,673,374. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent recites a topical anti-inflammatory composition comprising synergistically effective combination comprising: hydrogen peroxide in an amount sufficient to cleanse the skin; an exfoliant selected from the group consisting of an enzymatic exfoliant and an mono- or poly-hydroxy acid; a hydrophilic moisturizing agent in an amount sufficient to facilitate hydration of the skin; a hydrophobic moisturizing agent in an amount sufficient to inhibit moisture loss by the skin; an anti-inflammatory agent in an amount sufficient to reduce inflammation of the skin; and a carrier wherein the carrier comprising an amount of amphoteric surfactant and citric acid is sufficient to inhibit hydrogen peroxide decomposition for at least three months (see claims 1), wherein the hydrophobic moisturizing agent is ceramide, borage oil, tocopherol, tocopherol linoleate, dimethicone, glycerine, or a mixture thereof (see claim 3), wherein the hydrophilic moisturizing agent is hyaluronic acid, sodium peroxylinecarbolic acid, wheat protein, hair keratin amino acids, or a mixture thereof (see claim 4), in the form of

a gel, paste, cream, lotion, emulsion, or ointment (see claim 6). The only difference between the pending claims and the patented claims is that the instant pending claims contain a broader independent claim.

Claims 28-40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over U.S. Patent No. 7,018,660; 6,383,523; 6,071,541; 6,296,880 in view of GARRISON et al (US 5,569,651).

The patents recite a composition comprising of: hydroxy acid, such as an alpha-hydroxy acid (see US 6,383,523 at claim 1 and claim 3); hydrogen peroxide (see claim 1); citric acid (see claim 4); amphoteric surfactant (see claim 5); anti-inflammatory agent 9see claim 8); and moisturizer (see claim 8).

These patents do not specifically teach using hydrophilic and hydrophobic moisturizers.

GARRISON teaches that hydrophilic and hydrophobic moisturizers, such as propylene and glycerin (see col. 3, Example 1 and col. 4, Example 2, Example 3), are commonly added into creams and lotions intended for the skin.

It would have been obvious to the person of ordinary skill in the art at the time the invention was made to incorporate a hydrophilic and hydrophobic moisturizers into the cited patents. The person of ordinary skill in the art would have been motivated to make those modifications, because the patents recite adding a moisturizer and reasonably would have expected success because hydrophilic and hydrophobic moisturizers are commonly added into creams and lotions intended for the skin.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 28, 30, 32, 33-36, and 40 are rejected under 35 U.S.C. 102(e) as being anticipated by OLIVER (US 5,869,062).

Applicant's claims are directed to a composition comprising of: hydrogen peroxide; hydrophilic moisturizing agent; hydrophobic moisturizing agent; exfoliant, such as an alpha-hydroxy acid; anti-inflammatory agent; and an anti-oxidant.

OLIVER teaches a composition comprising of: hydrogen peroxide (see col. 3, line 7); hydrophilic moisturizing agent, such as propylene glycol (see col. 2, line 50); hydrophobic moisturizing agent, such as glycerine (see col. 2, line 50) or tocopherol (see col. 3, line 29); exfoliant, such as an alpha-hydroxy acid, (see col. 2, line 59-50); anti-inflammatory agent, such as calamine (see col. 2, line 14-18); an anti-oxidant, such as ascorbic acid (see col. 2, line 26); and gel (see col. 3, line 65).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 28-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over OLIVER (US 5,869,062) in view of NADAUD et al (US 5,605,694), GARRISON et al (US 5,569,651) and FOTINOS (US 6,335,388).

As discussed above, OLIVER teaches a composition for acne (see col. 1, line8) comprised of: hydrogen peroxide (see col. 3, line 7); hydrophilic moisturizing agent, such as propylene glycol (see col. 2, line 50); hydrophobic moisturizing agent, such as glycerine (see col. 2, line 50) or tocopherol (see col. 3, line 29); exfoliant, such as an alpha-hydroxy acid, (see col. 2, line 59-50); anti-inflammatory agent, such as calamine (see col. 2, line 14-18); an anti-oxidant, such as ascorbic acid (see col. 2, line 26); and gel (see col. 3, line 65).

OLIVER does not specifically teach using hydrophilic moisturizing agent, such as hyaluronic acid; hydrophobic moisturizing agent, such as ceramide; alpha-hydroxy acid, such as citric acid; and amphoteric surfactant.

NADAUD teaches a composition for acne (see abstract) comprised of: hydrophilic moisturizing agent, such as hyaluronic acid (see col. 4, linen 54-55 and col. 6, line 22); hydrophobic moisturizing agent, such as glycerol, which is glycerine; alpha-hydroxy acid (see col. 4, line 56); and surfactants.

GARRISON teaches a composition for acne (see abstract) comprised of: hydrophilic moisturizing agent, such as propylene glycol (see col. 4, line 50); hydrophobic moisturizing agent, such as glycerin (see col. 4, line 18; exfoliant, such as lactic acid (see col. 4, line 17) or citric acid (see col. 2, line 23-25), which are alpha-hydroxy acid; anti-inflammatory agent, such as salicylic acid (see col. 4, line 17); emulsifiers (see col. 4, line 3, which are surfactants; and preservatives (see col. 4, line 5).

FOTINOS teaches ceramide is a moisturizing agent that also has anti-radical activity (see col. 6, line 10-12).

It would have been obvious to the person of ordinary skill in the art at the time the invention was made to hydrophilic moisturizing agent, such as hyaluronic acid; hydrophobic moisturizing agent, such as ceramide; alpha-hydroxy acid, such as citric acid; and amphoteric surfactant into OLIVER's composition. The person of ordinary skill in the art would have been motivated to make those modifications and reasonably would have expected success because surfactants, hydrophilic and hydrophobic moisturizers are commonly added into creams and lotions intended for the skin; ceramide is a moisture that has anti-radical attributes that would be beneficial to the skin; and the alpha-hydroxy acids, such as citric acid and lactic acid, were well-known to be used in anti-acne compositions.

Telephonic Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAKE M. VU whose telephone number is (571)272-8148. The examiner can normally be reached on Mon-Tue and Thu-Fri 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jake M. Vu/
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Art Unit 1618